

**To:** CN=Kristine Koch/OU=R10/O=USEPA/C=US@EPA;CN=Chip Humphrey/OU=R10/O=USEPA/C=US@EPA[]; N=Chip Humphrey/OU=R10/O=USEPA/C=US@EPA[]  
**Cc:** []  
**From:** CN=Lori Cora/OU=R10/O=USEPA/C=US  
**Sent:** Wed 5/2/2012 6:35:59 PM  
**Subject:** Fw: Congressional Inquiry: Portland Harbor Superfund Site  
[http://www.epa.gov/region10/pdf/ph/uplands/gnl\\_address\\_list\\_august\\_2011.pdf](http://www.epa.gov/region10/pdf/ph/uplands/gnl_address_list_august_2011.pdf)  
[http://www.epa.gov/region10/pdf/ph/uplands/portland\\_harbor\\_information\\_request\\_responses\\_2011-09-16.pdf](http://www.epa.gov/region10/pdf/ph/uplands/portland_harbor_information_request_responses_2011-09-16.pdf)

More questions from congress.

Lori Houck Cora | Assistant Regional Counsel  
U.S. Environmental Protection Agency | Region 10  
P: (206) 553.1115 | F: (206) 553.1762 | cora.lori@epa.gov

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----- Forwarded by Lori Cora/R10/USEPA/US on 05/02/2012 11:35 AM -----

**From:** Lori Cora/R10/USEPA/US  
**To:** Cindy Schuster/R10/USEPA/US@EPA  
**Date:** 05/02/2012 11:35 AM  
**Subject:** Re: Fw: Congressional Inquiry: Portland Harbor Superfund Site

Hi, Cindy. I am not sure I understand all that is being asked. I am assuming that they are asking for my previous references to PRPs and/or PRP group. My responses are imbedded in the paragraph below.

Lori Houck Cora | Assistant Regional Counsel  
U.S. Environmental Protection Agency | Region 10  
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**From:** Cindy Schuster/R10/USEPA/US  
**To:** Lori Cora/R10/USEPA/US@EPA  
**Date:** 05/02/2012 10:39 AM

Subject: Fw: Congressional Inquiry: Portland Harbor Superfund Site

Lori, here is a request for further clarification.--Cindy

----- Forwarded by Cindy Schuster/R10/USEPA/US on 05/02/2012 10:37 AM -----

From: Carolyn Levine/DC/USEPA/US  
To: Cindy Schuster/R10/USEPA/US@EPA  
Date: 05/02/2012 10:22 AM  
Subject: Re: Congressional Inquiry: Portland Harbor Superfund Site

Hi Cindy,

Thanks for the information. CRS' specific task is to provide a neutral analysis of the statutory authorities of CERCLA that would govern the potential liability of the Navy at the Portland Harbor Superfund site and the mechanisms for cost-recovery that the parties in the Lower Willamette Group may pursue if the Navy may in fact be liable. CRS is asking whether the PRP group referred to is the Lower Willamette Group (which currently does not include the Navy?). Currently, there are 148 parties that have been identified as potentially liable for cleanup costs at the Portland Harbor Site. Sixty-five PRPs were identified in 2001 and we have an ongoing PRP search underway. In 2001 ten parties signed up to perform the RI/FS under an administrative order. Those 10 parties call themselves the Lower Willamette Group (LWG). The Navy is not one of the 10 parties. EPA has been told that approximately 4 other parties agreed separately to help fund the RI/FS. In 2005/2006, at the request of the LWG, EPA asked other PRPs to help contribute to the costs of the RI/FS and approximately 32 additional parties agreed to pay the LWG some money for the work. The Navy is not at this time contributing money to the LWG. Any person that incurs costs in performing Superfund work has contribution rights to seek reimbursement of a portion of those costs from other PRPs. There are more PRPs than the LWG that could potentially seek contribution from the Navy at this stage. The LWG filed a cost recovery lawsuit in federal court in 2009 to assure they preserved their claims against parties that did not agree to sign tolling agreements. The Federal government signed a tolling agreement so was not named in the LWG's lawsuit. The original Congressional inquiry to CRS about the status of the Navy's potential liability stems from the parties in the Lower Willamette Group who would like to recover a portion of their costs from the Navy. While CRS understands that the cost-recovery process would not necessarily involve EPA, he is asking if we can confirm that the PRPs are in fact the Lower Willamette Group, and whether EPA intends to pursue the Navy directly for its potential liability or to leave the potential liability of the Navy to private negotiations with other PRPs identified at the site, such as the Lower Willamette Group. I'm not sure we could even say that we intend to pursue. EPA cannot sue PRPs for costs it did not incur. We can only negotiate and settle claims for past and future costs EPA and DOJ incurs in responding to hazardous substance releases and enforcing CERCLA. The LWG will need to resolve their own claims for reimbursement. EPA intends to seek settlements with all identified PRPs, including the Navy, for performance of the cleanup and reimbursement of EPA's past and future response costs related to Portland Harbor.

EPA hopes (but has no way to assure) the private allocation process will both address how the LWG's and other PRPs' costs for the RI/FS are divided up as well as how future cleanup costs and reimbursement of EPA costs will be shared.

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Carolyn Levine  
U.S. EPA/Office of Congressional Affairs  
(202) 564-1859

FAX: (202) 501-1550

From: Cindy Schuster/R10/USEPA/US  
To: Carolyn Levine/DC/USEPA/US@EPA  
Date: 05/02/2012 10:53 AM  
Subject: Re: Congressional Inquiry: Portland Harbor Superfund Site

This sentence from the writeup should answer that question: "EPA and the Navy have not agreed on the Navy's share of liability."

From: Carolyn Levine/DC/USEPA/US  
To: Cindy Schuster/R10/USEPA/US@EPA  
Date: 05/02/2012 07:48 AM  
Subject: Re: Congressional Inquiry: Portland Harbor Superfund Site

Cindy,  
I'm in a meeting and can't read through to see if it answers crs Q- he clarified in another email:  
This inquiry focuses on whether an agreement has been reached with the Navy regarding its potential share of liability at the site in response to the general notice letter and the Section 104(e) information request.  
Confirmation of whether such an agreement has been finalized or not would be sufficient, and if it is finalized and could be disclosed, what the terms of the agreement are.

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Sent via BlackBerry

----- Original Message -----

From: Cindy Schuster  
Sent: 05/02/2012 07:36 AM PDT  
To: Carolyn Levine  
Subject: Fw: Congressional Inquiry: Portland Harbor Superfund Site  
Carolyn, here is the response from our attorney for the site.  
Cindy  
206/553-1815

----- Forwarded by Cindy Schuster/R10/USEPA/US on 05/02/2012 07:35 AM -----

From: Lori Cora/R10/USEPA/US  
To: Cindy Schuster/R10/USEPA/US@EPA  
Cc: Marianne Holsman/R10/USEPA/US@EPA, Kristine Koch/R10/USEPA/US@EPA, Chip Humphrey/R10/USEPA/US@EPA  
Date: 05/01/2012 04:08 PM  
Subject: Re: Fw: Congressional Inquiry: Portland Harbor Superfund Site

Hello, Cindy. Below are responses to the factual questions about the Navy and Portland Harbor. EPA's analysis of the facts about a particular PRP and what legal theories of liability may apply is enforcement confidential information.

As the requester noted, EPA Region 10 has notified the Department of Navy of its potential liability for response costs at the Portland Harbor Superfund Site. Region 10 sent an information request to the Navy and the Navy submitted a response in July 2008.

Based on current information, the Navy owned or leased some facilities along the Willamette River during the World War II years. The Navy also leased properties through the U.S. Maritime Commission. The U.S. Maritime Commission, along with the predecessor to the General Services Administration, purchased or leased a majority of the federally owned properties along the Willamette River. The Navy also had contracts with private companies for the construction and/or conversion of ships for naval purposes during WW II, maybe WW I too. There is some information that the Navy or another former federal war assets agency contracted for the dismantling of ships at Portland Harbor after the war ended. The U.S. Maritime Commission, now the Maritime Administration within the Department of Transportation, contracted with private shipbuilding companies to have Liberty Ships built in Portland Harbor and later dismantled.

The Maritime Administration, the US Navy, and the General Services Administration are believed to be the current, successor agencies to the several defunct War Department agencies involved with shipbuilding and dismantling at Portland Harbor during both WWI and WWII.

Region 10 helped the PRPs at Portland Harbor convene a private, confidential allocation process to sort out amongst themselves the relative share of liability of each party. The Federal PRPs are participating in that process. EPA and the Navy have not agreed on the Navy's share of liability. EPA does not intend to reach separate agreements with Portland Harbor PRPs, outside of bankruptcies or other insolvency circumstances, until after the Record of Decision is issued and EPA determines it is appropriate to negotiate cleanup agreements, at which time we hope the allocation process results will be available to inform good faith offers from PRPs.

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From: Cindy Schuster/R10/USEPA/US  
To: Lori Cora/R10/USEPA/US@EPA  
Cc: Marianne Holsman/R10/USEPA/US@EPA  
Date: 05/01/2012 12:07 PM  
Subject: Fw: Congressional Inquiry: Portland Harbor Superfund Site

Lori,

Please see the message below from HQ OCIR, which forwards a Congressional inquiry about the Navy's liability at Portland Harbor, and let me know how OCIR can respond.

Cindy Colgate Schuster  
Congressional Coordinator  
International Coordinator  
206/553-1815

----- Forwarded by Cindy Schuster/R10/USEPA/US on 05/01/2012 11:58 AM -----

From: Carolyn Levine/DC/USEPA/US  
To: Cindy Schuster/R10/USEPA/US@EPA  
Date: 04/30/2012 02:19 PM  
Subject: Fw: Congressional Inquiry: Portland Harbor Superfund Site

Hi Cindy,

see inquiry below from the Congressional Research Service on behalf of an undisclosed congressional office regarding the status of the liability of the U.S. Navy as a potentially responsible party under CERCLA at the Portland Harbor Superfund site. I checked with HQ-OSWER, and they said that OECA and R10 ORC need to weigh in since we probably don't comment on EPA's efforts regarding the potential liability of parties at specific SF sites until some settlement has been reached or there has been some sort of public statement. Here is the inquiry copied below, can you please check with your folks? Thanks.

Based on publicly available information that I was able to find on EPA's Region 10 website, I was able to confirm that EPA sent a general notice letter of potential liability under CERCLA to the U.S. Navy in April 2006, and an information request under Section 104(e) of CERCLA to which the U.S. Navy apparently responded. However, I was not able to confirm the status of the U.S. Navy's liability beyond those actions, nor what the Navy's response to the information request entailed.

I found the list of recipients of the general notice letters, and the information requests, at the following links on EPA's Region 10 website:  
[http://www.epa.gov/region10/pdf/ph/uplands/gnl\\_address\\_list\\_august\\_2011.pdf](http://www.epa.gov/region10/pdf/ph/uplands/gnl_address_list_august_2011.pdf)  
[http://www.epa.gov/region10/pdf/ph/uplands/portland\\_harbor\\_information\\_request\\_responses\\_2011-09-16.pdf](http://www.epa.gov/region10/pdf/ph/uplands/portland_harbor_information_request_responses_2011-09-16.pdf)

I also found in the August 2011 Draft Remedial Investigation Report for the Portland Harbor Superfund site, also on Region 10's website, that the U.S. Navy historically had contracted with private facilities in the area to construct new U.S. Naval vessels, and to scrap obsolete U.S. Naval vessels. However, I did not find any information indicating that the U.S. Navy owned or operated any facilities in the area.

Whether the U.S. Navy may be liable under CERCLA on behalf of the United States would appear to center around the question of whether contracting with the private facilities to construct and scrap U.S. Naval vessels constituted the generation or transport of waste under the liability scheme of Section 107(a) of CERCLA.

Please confirm the most recent status of determining the U.S. Navy's potential liability under CERCLA at the Portland Harbor Superfund site, and whether EPA and the U.S. Navy have agreed upon the Navy's share of the liability. If possible, a response by Friday of next week, May 4th, is requested. If more time may be required, please let me know. Thank you for your assistance as always.

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Carolyn Levine

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